



Date: March 24, 1998
Case No.: 97-INA-241

In the Matter of:

SUPER D DRUGS, INC.
Employer,

On Behalf of:

ELSIE C. TSANG
Alien.

BEFORE: Burke, Guill, and Vittone,
Administrative Law Judges

DECISION AND ORDER

Per Curiam. This matter arises from a request for review by the Board of Alien Labor Certification Appeals of a denial of alien labor certification by a U.S. Department of Labor Certifying Officer ("CO").¹ Employer is a pharmacy seeking to fill the position of Pharmacist. (AF 42).²

In a Notice of Findings ("NOF") dated January 7, 1997, the Certifying Officer ("CO") proposed to deny the application for labor certification unless Employer conducted further recruitment efforts at three colleges and universities, as the job required only a bachelor of science degree in Pharmacy and no prior work experience. (AF 29, 42).³

Employer submitted timely rebuttal dated January 15, 1997, arguing that it had not interviewed the rejected U.S. applicant, not because she was unqualified, but because she told Employer that she did not want to commute to Employer's advertised location. (AF 25).

¹Permanent alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A), and the implementing regulations at 20 C.F.R. Part 656.

²References to the appeal file are abbreviated "AF".

³The CO also requested additional documentation about the rejection of one U.S. applicant. Because we affirm the CO on the additional recruitment issue, we do not reach this other ground for denial.

Employer argued further that since it had complied with the state employment office's recruitment requirements that it believed it had fully complied with all necessary requirements, and that the CO could not force it to undertake additional efforts to obtain certification. (AF 25).

The CO issued a Final Determination ("FD") dated January 30, 1997, denying the application for labor certification. (AF 23-24). The CO rejected Employer's argument that the CO could not require further recruitment efforts. (AF 24).

Employer's contention, that since it complied with the state employment office's recruitment suggestions then it need not undertake the further recruitment efforts required by the CO, is not supported by precedent. (AF 25). The CO is authorized to require further recruitment efforts if he or she finds that such recruitment could produce additional qualified job applicants. *See Intel Corp.*, 87-INA-570 (Dec. 11, 1987) (*en banc*); *Essex County College*, 88-INA-147 (Feb. 1, 1989) (*en banc*) (recruitment through colleges and universities under § 656.21(b)(4)).

It is true that, where an employer has complied with the stated regulatory criteria governing the advertisement and recruitment of employees, the CO should not require additional advertisement and recruitment without offering a reasonable explanation of why the employer's advertisements or recruitment were inadequate to test the job applicant market and why the recruitment efforts recommended by the CO would significantly add to the test. *See Alpine Electronics of America, Inc.*, 88-INA-107 (Mar. 14, 1989) (*en banc*). However, the justification for requiring re-recruitment need not be elaborate. In *Del Tropico Foods, Inc.*, 88-INA-120 (May 2, 1990), the panel found that the CO's explanation that the employer should have advertised for the position of Food Chemist in a professional journal such as Food Technology rather than solely in the local newspaper, though not elaborate, was adequate to explain why the publication used by the employer failed to provide an adequate test of the labor market.

Here, the CO determined that recruitment at three colleges and universities that offered degrees in Pharmacy would increase the possibility of finding a qualified U.S. applicant rather than only advertising in local newspapers, especially because Employer's requirement was only a bachelor of science degree in Pharmacy, without any requirement for prior work experience. (AF 29, 42). Further, Employer's previous advertisement efforts only produced two applicants, one of which was unqualified because she only had a high school education. (AF 30). Under these circumstances, the CO made a reasonable determination that additional recruitment efforts at colleges and universities that offered Pharmacy degrees would likely yield more qualified U.S. applicants than advertisements in local newspapers, especially since there was only a bachelor's degree requirement, and no work experience requirement, for the position offered. (AF 42).

If an employer does not comply with a CO's instruction to recruit further and document the results, § 656.21(b)(4) is violated. *See, e.g., Alynne Rosenfab*, 89-INA-218 (June 12, 1990). As Employer here failed to comply with the CO's demand that it undertake additional recruitment efforts, Employer has violated the regulations and the CO was proper in denying Employer's application.

Because Employer complied with neither the requirements for lawful rejection of U.S. workers nor those for good faith recruitment efforts, and did not undertake corrective action as required by the CO, we will affirm the CO's denial of the application for labor certification.

ORDER

Accordingly, the Certifying Officer's denial of labor certification is hereby **AFFIRMED.**

SO ORDERED.

Entered at the direction of the Panel:

TODD R. SMYTH
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

**Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W.
Suite 400
Washington, D.C. 20001-8002**

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.